STATE OF MICHIGAN

COURT OF APPEALS

JAMES L. ERWIN, Plaintiff/Counterdefendant-Appellant,	UNPUBLISHED August 26, 2004
v	No. 248057 Barry Circuit Court
ROBERT MCLEOD and MELISSA MCLEOD, Defendants/Counterplaintiffs-Appellees.	LC No. 02-000283-CH

Before: Whitbeck, C.J., and Owens and Schuette, JJ.

PER CURIAM.

In this land dispute and harassment case, plaintiff appeals as of right a judgment based on defendant's countercomplaint awarding defendant damages and attorney fees. We affirm.

I. FACTS

This appeal concerns the trial court's rulings relating to a countercomplaint filed by defendants in this case. Defendants' countercomplaint contained a claim for harassment. In their harassment counterclaim, defendants alleged that plaintiff had engaged in conduct in violation of MCL 750.411h (stalking statute). Defendants sought to recover damages and reasonable attorney fees. Under MCL 600.2954, a victim may maintain a civil action to recover damages, costs, and reasonable attorney fees against an individual who engages in conduct prohibited under MCL 750.411h.

This case arose because of a dispute between neighbors over the maintenance and use of a private dirt road called Little Long Lake Drive. The road provides ingress and egress to all property owners, including plaintiff and defendants, in Prudden's subdivision in Castleton Township in Barry County. On May 13, 2002, plaintiff filed a complaint against defendants in propria persona. The complaint contained four counts relating to defendants' use of Little Long Lake Drive and a park that had been dedicated for the use of property owners and their guests.

On June 18, 2002, defendants filed an in propria persona answer to plaintiff's complaint. Subsequently, defendants retained counsel and filed a countercomplaint. Defendants' countercomplaint contained two counts. Count I was a claim for interference with quiet enjoyment of property or an easement. Count II, which is the subject of this appeal, was a claim for harassment. Defendants alleged that plaintiff's lawsuit against defendants was without merit and was "one of a series of actions taken by the [p]laintiff intended to harass, humiliate and embarrass the [d]efendants." Defendants further asserted that plaintiff had stopped defendants' guests in their vehicles "to demand information as to their identity and their intentions." Defendants also alleged that plaintiff telephoned defendant Robert McLeod's parole officer "on numerous occasions with baseless allegations" and placed fliers in the neighbors' mailboxes or newspaper boxes stating that defendant Robert McLeod was on parole and had recently been released from prison. According to defendants, plaintiff's conduct "caused [d]efendants to feel intimidated, threatened or harassed" and was a violation of MCL 750.411h [Michigan's stalking statute]. Defendants sought to recover from plaintiff economic damages, "including lost work time and expending of legal fees to defend a frivolous lawsuit brought strictly to harass [d]efendants."

A bench trial was held on February 18, 2003. Plaintiff appeared in propria persona and presented seven witnesses. At the conclusion of plaintiff's proofs, defense counsel moved for directed verdict. The trial court granted the motion, ruling:

> Well, I understand that there's a problem on this roadway, and the Court has some ability to help solve the problem, but it has to be presented to the Court in the proper way by somebody who knows what they're doing.
>
> I'm not trying to be critical of your efforts to try to solve this problem, Mr. Erwin, but it's clear to me that you don't know what you're doing when you get into a courtroom situation. I have to decide cases by established rules of evidence and procedure. There are many things you have not put into evidence this morning. And so because of that, I'm going to grant the motion for a directed verdict and dismiss all four of the counts in your complaint.

After the trial court granted defendants' motion for directed verdict, defendants moved to dismiss Count I of their counterclaim and presented evidence only on Count II (harassment) of their counterclaim. Matthew Houchlei testified that he was a resident in Prudden's subdivision and that he had witnessed plaintiff intentionally "driving on the edge of" defendants' grass lawn. Houchlei also asserted that plaintiff had taken photographs of defendants' property. Raymond D. Pufpaff testified that in the summer of 2002, he was going to visit defendants, when plaintiff stopped him and asked "to see written permission." According to Pufpaff, plaintiff told him that he "had to have proof of it [permission] next time."

Defendant Melissa McLeod testified that plaintiff harassed her by yelling at her and calling her a mole, starting a fire on his own property to intentionally cause smoke to go into defendants' home to disturb them, and suing her to force her to pay for gravel for Little Long Lake Road. She also asserted that plaintiff took pictures of her and watched her from behind bushes on at least five occasions. McLeod further stated that on "a couple" of occasions, plaintiff interfered with visitors who were coming to see defendants. Finally, she testified that

plaintiff harassed her when he came to her "front yard with his black swim shorts, panties, on, walking back and forth in my yard." According to McLeod, plaintiff's actions caused her to be fearful, and he told her that he was "gonna get even with [defendant Melissa McLeod] and everyone else down there."

The trial court specifically found that plaintiff's conduct of filing a lawsuit against defendants and stopping defendants' guests was not actionable under MCL 750.411h. However, the trial court held that plaintiff's conduct of taking unwanted photographs of and watching defendant Melissa McLeod on five occasions constituted harassment under MCL 750.411h. Therefore, the trial court ordered plaintiff to pay damages of $500 and exemplary damages of $1,000. The trial court also ordered "attorney fees to be taxed by [defense counsel]." In its judgment, the trial court ordered plaintiff to pay reasonable attorney fees of $2,731.46. Subsequently, plaintiff retained counsel and moved for relief from judgment and for new trial. The trial court denied the motion for new trial, but reduced the amount of attorney fees to $1,000.

II. MOTION IN LIMINE

On appeal, plaintiff first argues that the trial court erred in denying his motion in limine. We disagree.

A. Standard of Review

A trial court's decision to grant or deny a motion in limine is reviewed for an abuse of discretion. *Bartlett v Sinai Hospital of Detroit,* 149 Mich App 412, 418; 385 NW2d 801 (1986).

B. Analysis

Before trial, plaintiff filed a motion in limine in propria persona seeking to have the trial court "restrict testimony to the issues addressed on [sic] the Plaintiff [sic] complaint." The trial court denied plaintiff's motion, reasoning that it was impossible to anticipate what evidence defendants would offer at trial. In addition, the trial court instructed plaintiff that he should make any objections to evidence at trial and that the trial court would rule on the objections at that time.

Plaintiff's motion in limine was essentially a motion to exclude evidence that had not yet been offered, introduced or even specifically identified. The trial court properly responded to plaintiff's motion by ruling that the motion was untimely because no evidence had yet been offered by defendants. Clearly, it is impossible to determine if evidence is admissible if the substance of the evidence is not known. Therefore, plaintiff's motion in limine was premature, and the trial court did not abuse its discretion in denying the motion and waiting until trial to consider specific objections to evidence.

III. COUNTERCLAIM

Plaintiff next argues that the trial court erred in admitting defendant Melissa McLeod's testimony because defendants' counterclaim for harassment only contained specific factual allegations regarding plaintiff's harassment of defendant Robert McLeod. Therefore, plaintiff

contends that he did not have sufficient notice of the nature of the harassment claim against him. Plaintiff also claims that he did not have sufficient notice of the nature of the claim against him because the harassment counterclaim did not specifically cite MCL 600.2954. We disagree.

A. Standard of Review

"Decisions concerning the . . . scope of pleading . . . are within the sound discretion of the trial court and reversal is only appropriate when the trial court abuses that discretion." *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). Similarly, this Court reviews the trial court's decision whether to admit evidence for an abuse of discretion. *Dep't of Transportation v VanElslander*, 460 Mich 127, 129; 594 NW2d 841 (1999).

B. Analysis

MCR 2.111(B)(1) requires a counterclaim to contain "[a] statement of the facts . . . with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend." "Under Michigan's rule of general fact-based pleading, . . . the only facts and circumstances that must be pleaded 'with particularity' are claims of 'fraud or mistake.'" *Iron Co v Sundberg, Carolson & Associates, Inc*, 222 Mich App 120, 124; 564 NW2d 78 (1997). With all other claims, a complaint must merely be specific enough to reasonably inform the adverse party of the nature of the claims against him. MCR 2.111(B)(1); *Weymers, supra*, 654.

In this case, defendants' harassment counterclaim reasonably informed plaintiff of the nature of the claim against him. The claim was labeled a "[h]arrassment" claim. Moreover, contrary to plaintiff's argument on appeal, at least two of the factual allegations for the harassment counterclaim concerned both defendants. Furthermore, defendants' failure to cite MCL 600.2954 in the countercomplaint did not render insufficient the factual specificity of the countercomplaint. Defendants' harassment counterclaim was a civil action against plaintiff for damages under MCL 600.2954 based on plaintiff's violation of MCL 750.411h. Defendants cited MCL 750.411h in their harassment claim, alleging that plaintiff's conduct "was a violation of law MCL 750.411(h)." Defendants' citation to MCL 750.411h was sufficient to reasonably inform plaintiff of the nature of the harassment claim.

We also reject plaintiff's contention that the factual allegations in defendants' counterclaim for harassment were not sufficiently specific because there were no factual allegations relating to defendant Melissa McLeod. As we noted above, two of the factual allegations did involve her. Furthermore, although plaintiff is correct that at trial, Melissa McLeod testified regarding some instances of harassment that were not specifically pleaded or alleged in the counterclaim, plaintiff was still reasonably informed of the nature of the harassment claim against him. Defendants were not required to plead with particularity every factual allegation of harassment." A "plaintiff is not obligated under MCR 2.111(B)(1) to plead its factual allegations with particularity. *Iron Co, supra*, 125. Furthermore, if during discovery, evidence leads to new theories supporting a claim pled previously, such evidence may be asserted as within the scope of the pleadings. *Id.*, 124-125. Finally, if plaintiff believed that defendants' factual allegations in support of their harassment counterclaim were too general, plaintiff "could have filed a motion for a more definite statement under MCR 2.115(A) or interrogatories requesting greater factual specificity regarding plaintiff's claims." *Id.*, 125.

IV. DAMAGES

Plaintiff next argues that the evidence is insufficient to require him to pay damages to defendants. We disagree.

A. Standard of Review

When reviewing a claim based on the sufficiency of the evidence in a civil action, this Court examines the evidence in a light most favorable to the plaintiff, giving the plaintiff the benefit of every reasonable inference that can be drawn from the evidence. *Price v Long Realty, Inc*, 199 Mich App 461, 472; 502 NW2d 337 (1993).

B. Analysis

The trial court ordered plaintiff to pay defendants damages under MCL 600.2954 because plaintiff engaged in conduct prohibited under MCL 750.411h. Under MCL 750.411h(1)(d), "stalking" is defined as "a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested." "'Course of conduct' means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose." MCL 750.411h(1)(a). "'Harassment' means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress." MCL 750.411(1)(c).

At trial, defendants presented evidence of at least two or more acts on plaintiff's part. It can be inferred from Melissa McLeod's testimony that she did not consent to plaintiff's conduct. She testified that plaintiff harassed her by yelling at her and calling her a mole. She also asserted that plaintiff took pictures of her and watched her from behind bushes on at least five occasions. She further stated that on "a couple" of occasions, plaintiff interfered with visitors who were coming to see defendants. Finally, she testified that plaintiff harassed her when he came to her "front yard with his black swim shorts, panties, on, walking back and forth in my yard." McLeod asserted that plaintiff's actions caused her to feel fearful and threatened. She also stated that plaintiff threatened that he was "gonna get even with [defendant Melissa McLeod] and everyone else down there."

Giving defendants/counterplaintiffs the benefit of every reasonable inference that can be drawn from the evidence, we find that the evidence was sufficient to establish that plaintiff/counterdefendant engaged in a course of two or more acts of unconsented contact with defendant Melissa McLeod and that plaintiff/counterdefendant's unconsented contact reasonably caused her to feel threatened. Accordingly, there was sufficient evidence to satisfy awarding defendants damages under MCL 600.2954 based on plaintiff's violation of MCL 750.411h.

V. ATTORNEY FEES

Plaintiff finally argues that that the trial court erred in ordering plaintiff to pay attorney fees in the amount of $1,000 on defendants' behalf. We disagree.

A. Standard of Review

This Court reviews a trial court's decision to award costs and attorney fees for an abuse of discretion. *Farmers Ins Exchange v Kurzmann*, 257 Mich App 412, 422; 668 NW2d 199 (2003); *Kernen v Homestead Development Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002).

B. Analysis

According to plaintiff, the trial court did not award actual attorney fees to defendants, but only taxed attorney fees. Plaintiff further asserts that under MCL 600.2441(2)(c), the trial court could not order plaintiff to pay more than $150 in such costs. MCL 600.2441(2)(c), by its own terms, applies to costs alone and is not a limit on attorney fees.

Furthermore, while the trial court's statements on the record at trial regarding attorney fees were somewhat confusing, the trial court did, in fact, award defendants reasonable attorney fees and not merely costs. Generally, attorney fees are not recoverable unless expressly authorized by statute, court rule, or common law exception. MCL 600.2405(6); *Terra Energy, Ltd v Michigan*, 241 Mich App 393, 397; 616 NW2d 691 (2000). In this case, attorney fees are expressly authorized by MCL 600.2954, which provides that a victim who maintains a civil action for damages against an individual who violates MCL 750.411h may be awarded "reasonable attorney fees." Defendants' counterclaim for harassment was a civil action for damages. Defendants specifically cited MCL 750.411h in their countercomplaint and specifically requested attorney fees. On appeal, plaintiff does not challenge the reasonableness of the amount of attorney fees. We find that the trial court did not abuse its discretion in ordering plaintiff to pay attorney fees of $1,000 because the attorney fees were expressly authorized by MCL 600.2954.

Affirmed.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Bill Schuette